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Comments:

Comment on Microsoft settlement with the
Department of Justice

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Date: January 21, 2002

Comments on Microsoft Settlement with the Department of Justice

I am not a lawyer, I am a software developer with two decades of experience in the software industry. I am aware of some of the positive and negative impacts of many of Microsoft's products and business practices. I have read the settlement proposed by the Department of Justice. I doubt a line by line criticism of the settlement by someone with my limited knowledge of the law would be worthwhile, so I offer my over all opinions.

The settlement addresses prevention of future misdeeds and does not include any mention of punitive actions against Microsoft. I know our justice system has used the concept of punishments fit to crimes in the past (excuse me if my use of the word crime or other words is common and not legal). I thought our judicial system still made use of such a notion today. To my mind, there is not just the question of the settlement preventing the Microsoft corporation from engaging in illegal practices in the future, but also the larger question; Will it and other corporations be convinced that it is not a good idea to break this nation's anti-trust laws, based on how Microsoft is punished for breaking those same laws in the past? I thought the appellate court remand of the case to the district court, left the option of punitive remedies open.

The settlement does a good job of saying two things to Microsoft, "You shouldn't manipulate other companies in exactly the same way you did last time." and, "Feel free to find some other strategy for accomplishing the same thing." To a lawyer or judge, it may seem that the first statement should be much stronger. From what I have read of Microsoft's past behavior, I expect them to continue to ignore court orders, pretend compliance with court orders and laws, and to apply their own unrealistic interpretation of agreements, including this settlement, until someone in the justice system does something extreme which impacts Microsoft in a timely fashion.

So, why have some of the states gone along with this settlement? Some inappropriate comments, referring to the events of September 11, 2001, on the part of the judge, and an about face from their Department of Justice leadership led their negotiators and lawyers to believe that the most they would be able to get was some breathing room while Microsoft explores new strategies for abusing its monopoly. One of the things that probably led to such a biased negotiation is that the plaintiffs have some respect for the court and its wishes (for a quick settlement, in this case) while Microsoft does not.

The message corporate leaders are going to get from this is that if they have, or can acquire, a monopoly while the current administration is in power, they can get away with breaking the US anti-trust laws, regardless of whether or not they are found guilty of doing so.

Since the Department of Justice seems to have changed sides, just for truth in appearances, you might ask if it wouldn't prefer to list itself as assistant council for the defense instead of plaintiff in this case.

In summary, this settlement would **not** serve the public interest. It would be a detriment to the public interest. While a legislative body rushing to sign laws in order to appear responsive to the events of September 11 is very bad, comments from judges prompting rushed negotiations in order to appear sensitive and/or competent are almost as bad.



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